

WENDY MARIE WEATHERS, ESQ.
CLAIR GJERTSEN & WEATHERS PLLC
Attorneys for the Debtor
4 New King Street, Suite 140
White Plains, NY 10604
Phone: 914-472-6202
Fax: 914-472-1936
Email: wendy@cgwesq.com

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

Hearing Date: March 22, 2023

Hearing Time: 9:00 A.M.

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In re:

Jesus Mora,

Case No. 22-22263-cgm

Chapter 13

Debtor.

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**NOTICE OF HEARING ON DEBTOR'S OMNIBUS MOTION
FOR AN ORDER PURSUANT TO 11 U.S.C. §§ 506(a) AND 522(f), (I) VOIDING THE
JUNIOR MORTGAGE LIEN OF JAMES GLEESON AS THE ASSIGNEE OF RANGER
ASSOCIATES, LLC AGAINST DEBTOR'S HOMESTEAD PROPERTY LOCATED AT
67 PERRY AVENUE, PORT CHESTER, AND RECLASSIFYING THE SECURED
CLAIM OF THE CREDITOR IN THIS CASE BASED ON SUCH LIEN AS A WHOLLY
UNSECURED GENERAL CLAIM AND (II) VOIDING THE JUDICIAL LIEN OF LNVN
FUNDING LLC C/O RESURGENT CAPITAL SERVICES, RECLASSIFYING THE
SECURED CLAIM OF THE CREDITOR IN THIS CASE BASED ON SUCH LIEN
[CLAIM NO. 2-10] AS A WHOLLY UNSECURED GENERAL CLAIM.**

PLEASE TAKE NOTICE, that upon the annexed motion of JESUS MORA, (the "debtor"), dated February 23, 2023, by his attorney Wendy Marie Weathers, the undersigned will move this Court, at a hearing on March 22, 2023 at 9:00 a.m. or as soon thereafter as counsel can be heard at a hearing to be held via Zoom before the Honorable Cecelia G. Morris, United States Bankruptcy Judge, at the for an ORDER pursuant to 11 U.S.C. §506(a), 11 U.S.C. §522(f), 11 U.S.C. §1322, and F.R.B.P. 3007,

- (I) voiding the Junior Mortgage lien of James Gleeson as the assignee of Ranger Associates, LLC against the debtor's homestead property located at 67 Perry Street, Port Chester, New York, and reclassifying the secured claim of the creditor in this case based on such lien as a wholly unsecured general claim and
- (II) voiding the Judicial Lien of LVNV Funding LLC c/o Resurgent Capital Services, reclassifying the secured claim of the Creditor in this case based on such lien [Claim No. 2-1] as a wholly unsecured general claim, and directing the County Clerk of Westchester to mark the judgment as cancelled

PLEASE TAKE FURTHER NOTICE, that in light of the COVID-19 pandemic, pursuant to SDNY General Order M-543, all hearings will be conducted telephonically pending further order of this Court. This hearing shall take place virtually using ZOOM. Parties wishing to appear at the hearing must register their appearance forty-eight hours before the scheduled hearing utilizing the Electronic Appearance Portal <https://ecf.nysb.uscourts.gov/cgi-bin/nysbAppearances.pl> located on the Court's website.

PLEASE TAKE FURTHER NOTICE that objections, if any, to the relief requested in the Motion must be in writing, filed with the Bankruptcy Court and served upon the undersigned to be received no later than seven (7) days before the hearing date scheduled herein.

Dated: White Plains, New York
February 23, 2023

/s/Wendy Marie Weathers, Esq.

By: Wendy Marie Weathers, Esq.
Clair Gjertsen & Weathers PLLC
4 New King Street, Suite 140
White Plains, NY 10604
Phone: 914-472-6202
Fax: 914-472-1936
wendy@cgwesq.com

Krista M. Preuss

Chapter 13 Standing Trustee
399 Knollwood Road
White Plains, New York 10603

Office of the United States Trustee

U.S. Federal Office Building
201 Varick Street, Room 1006
New York, NY 10014

David H. Wander, Esq.
DAVIDOFF HUTCHER & CITRON LLP
605 Third Avenue
New York, New York 10158

James Gleeson
c/o Ranger Associates LLC
508 East 78th Street
New York, New York 10075

LVNV Funding LLC
625 Pilot Road, Suite 3
Las Vegas, NV 89119

Resurgent Capital Services
P.O. Box 10587
Greenville, SC 29603-0587

Forster & Garbus LLP
2950 Express Drive S, Suite 100
Islandia, New York 11749

Michelle C. Marans, Esq.
Frenkel Lambert Weiss Weisman & Gordon LLP
53 Gibson Street
Bay Shore, New York 11706

Raquel Felix, Esq.
ROBERTSON ANSCHUTZ SCHNEID CRANE & PARTNERS PLLC
6409 Congress Avenue, Suite 100
Boca Raton, Florida 33487

Rushmore Loan Management Services
P.O. Box 55004
Irving, CA 92619-2708

PHH Mortgage Corporation
ATTN Bankruptcy Department
P.O. Box 2605
West Palm Beach, FL 33416

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
In re:

Case No. 22-22263 (CGM)

Jesus Mora,

Chapter 13

AFFIRMATION IN SUPPORT

Debtor.

-----x
TO: THE HONORABLE CECELIA G. MORRIS
UNITED STATES BANKRUPTCY JUDGE

Wendy Marie Weathers, an attorney duly licensed to practice before the Courts of the State of New York and the Southern District of New York, being mindful of the penalties of perjury, affirms the following to be true:

1. I, Wendy Marie Weathers, Esq., declare under penalty of perjury pursuant to 28 U.S.C. 1746, that I am an attorney at law duly admitted to practice before the Courts of the State of New York and the United States District and Bankruptcy Courts for the Southern District of New York, and hereby affirms the following to be true:

2. Debtor, Jesus Mora, (“Debtor”), by his counsel, Clair Gjertsen & Weathers PLLC, states the following:

3. This affirmation is made in support of the debtor’s omnibus motion for the; (a) entry of an Order declaring that the junior mortgage lien held by James Gleeson as the assignee of Ranger Associates, LLC., (“Gleeson”) on the debtor’s real property located at 67 Perry Street, Port Chester, New York, is void as being wholly unsecured pursuant to 11 U.S.C. §§ 506(a) and reclassifying the secured claim of Gleeson as unsecured claims and; (b) Voiding the judgment lien of LVNV Funding on debtor’s real property located at 67 Perry Street, Port Chester, New York, and as being wholly

unsecured pursuant to 11 U.S.C. §§522(f) and reclassifying the judgment lien as completely unsecured.

4. The instant bankruptcy case was filed by the debtor under chapter 13 of the United States Bankruptcy Code on May 13, 2022, and a Chapter 13 Plan, which among other things, was provided under 3.3 of the Model Plan. The Plan was served upon all creditors and parties in interest.

SECURED CLAIM BY JAMES GLEESON

5. At the time of the filing, the Debtor was and continues to be the sole owner of and resides with his family at the real property located at 67 Perry Street, Port Chester, New York aka Section 135.76; Block 3; Lot 70) (the “Homestead Property”). The market value of the property according to Joseph Del Genio, a certified real property appraiser is Five Hundred Fifty Thousand Dollars (\$550,000.00) A copy of the recorded deed and appraisal are annexed hereto collectively as **Exhibit “A”**.

6. At the time of filing, the Homestead property was encumbered by a first mortgage serviced by Rushmore Loan Management Services (“Rushmore”) in the amount of \$717,699.85. A copy of the Proof of Claim #5 is annexed hereto as **Exhibit “B”**.

7. At the time of filing, the Homestead property was further encumbered by a junior mortgage held by James Gleeson as the assignee of Ranger Associates, LLC., (“Gleeson”) recorded on May 21, 2008, with the Westchester County Clerk’s Office under control number 481370348. A foreclosure judgment was obtained by Gleeson and filed on March 28, 2018, with the Westchester County Clerk’s Office for Seventy-seven Thousand One Hundred Thirty-nine Dollars and 66/100 Cents (\$77,139.66). Copies of the recorded mortgage and foreclosure judgment are annexed hereto as **Exhibit “C”**.

8. Pursuant to 11 U.S.C. §506(a), the junior mortgage lien held by Gleeson (with any subsequent successor or assign, “Creditor”) on the Homestead property is void as being wholly unsecured under 11 U.S.C. §§ 506(a) and 1322 since the amount of the senior debt secured by the Homestead Property exceeds the value of the Homestead Property.

9. Further, there is no collateral value in the Homestead Property to secure the Debtor’s obligations to the Creditor under Gleeson’s junior mortgage on the Homestead Property.

SECURED CLAIM OF LVNV FUNDING LLC

10. At the time of the filing of the petition herein, said Homestead Property was further encumbered by a judgment lien held by LVNV Funding LLC c/o Resurgent Capital Services (LVNV) in the amount of Five Thousand and Six Hundred and Sixty dollars and Seventy-One Cents (\$5,660.71). The judgment lien was filed with the Westchester County Clerk’s Office on March 11, 2014, bearing index no. 68294/2013. Copy of the transcript of judgment and Claim No. 2-1 filed on this Court’s Claims Docket is annexed hereto collectively as **Exhibit “D”**.

11. Pursuant to 11 U.S.C. §522(f) and Federal Rules of Bankruptcy Procedure Section 4003(d), a debtor may void a lien that impairs an exemption to which the debtor is entitled.

12. Debtor asserts that the following calculation is applicable under 11 U.S.C. §522(f)(2)(A):

| | |
|-----------------|---|
| \$ 550,000.00 | (Market Value) |
| - \$ 717,699.85 | (First Mortgage) |
| \$ -167,699.85 | Equity (Below the amount allowed for the homestead exemption) |

13. Based on the above calculation, Debtor is entitled to void the judgment on the Homestead Property in the amount of \$5,660.71, as it impairs his homestead exemption.

DISCUSSION

14. The amount owed to Rushmore on the first mortgage (\$717,699.85.) exceeds the value of the debtor's property (\$550,000.00) Dollars.

15. In accordance with 11 U.S.C. §506(a), an under secured claim is a secured claim only to the extent of the value of the underlying collateral and is an unsecured claim for the balance and pursuant to 11 U.S.C. §522(f)(1), the debtor may avoid both the junior mortgage held by Gleeson and the judgment lien of LVNV in their entirety.

16. The Debtor submits that this Motion does not present any novel issues of law and respectfully requests that the Court waive the requirement of a separate memorandum of law.

17. No previous Motion for the relief requested herein has been made to this Court or any other court.

WHEREFORE, it is respectfully requested that the Court enter an Order as follows:

a) Declaring that the junior mortgage lien held by James Gleeson as the assignee of Ranger Associates, LLC as the "Creditor") on the Debtor's property located at 67 Perry Avenue, Port Chester, NY 10573, aka Section 135.76, Block 3, Lot 70 (the "Homestead property") serving as collateral; is void as being wholly unsecured under 11 U.S.C. §§ 506(a) and 1322, and reclassifying the secured claim of the Creditor in this case based on such lien as an unsecured claim; and directing that the Westchester County Clerk deem the mortgage satisfied upon completion of the Debtor's chapter 13 plan.

b) Declaring that the judicial lien of LVNV Funding LLC C/O Resurgent Capital Services ("Creditor") recorded on March 11, 2014, with the Westchester County Clerk bearing Docket# 68294/2013, on the debtor's Homestead Property located at 67 Perry Avenue, Port Chester, NY 10573, aka Section 135.76, Block 3, Lot 70 serving as collateral; is void as being wholly

unsecured under 11 U.S.C. §§ 522(f), and reclassifying the secured claim of the Creditor in this case [Claim No. 2-1] as an unsecured claim and directing the Westchester County Clerk's Office to mark said lien as cancelled and granting such other and further relief as the Court deems just and proper.

Dated: White Plains, New York
February 23, 2023

/s/Wendy Marie Weathers, Esq.

By: Wendy Marie Weathers, Esq.
Clair Gjertsen & Weathers PLLC
4 New King Street, Suite 140
White Plains, NY 10604
Phone: 914-472-6202
Fax: 914-472-1936
wendy@cgwesq.com